

EXHIBIT 5

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
- - -

4 IN RE: NATIONAL : HON. DAN A.
5 PRESCRIPTION OPIATE : POLSTER
6 LITIGATION : MDL NO. 2804
7 :
8 This document relates to: : Case No. 17-MD-2804
9 :
10 The County of Summit, Ohio :
11 Ohio et al. v. Purdue Pharma :
12 L.P., et al., Case No. :
13 17-OP-45004 :
14 :
15 The County of Cuyahoga v. :
16 Purdue Pharma Purdue Pharma :
17 L.P., et al., Case No. :
18 18-OP-45090 :
19 - - -
20 - HIGHLY CONFIDENTIAL -
21 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW
22

23 VOLUME I
24 - - -
25 May 9, 2019

26 Videotaped deposition of
27 CRAIG J. McCANN, Ph.D., CFA, taken
28 pursuant to notice, was held at the law
29 offices of Morgan Lewis & Bockius, LLP,
30 1111 Pennsylvania Avenue, NW, Washington,
31 D.C., beginning at 10:03 a.m., on the
32 above date, before Michelle L. Gray, a
33 Registered Professional Reporter,
34 Certified Shorthand Reporter, Certified
35 Realtime Reporter, and Notary Public.

36 - - -
37 GOLKOW LITIGATION SERVICES
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39 deps@golkow.com

1 Q. So you have a Bachelor's
2 degree, a Master's degree, and a Ph.D.;
3 is that correct?

4 A. Correct.

5 Q. And your Ph.D. is in
6 economics, correct?

7 A. Correct.

8 Q. Okay. You are not a medical
9 doctor, correct?

10 A. Correct.

11 Q. You did not attend medical
12 school?

13 A. Correct.

14 Q. You are not a physician's
15 assistant?

16 A. Correct.

17 Q. You are not licensed to
18 write prescriptions?

19 A. Correct.

20 Q. You are not a pharmacist?

21 A. Correct.

22 Q. Fair to say you're not an
23 expert in healthcare or the healthcare
24 industry?

1 A. Yes.

2 Q. Fair to say that you do not
3 have professional experience with
4 suspicious order monitoring?

5 A. Yes.

6 Q. You have not been involved
7 in designing a suspicious order
8 monitoring program, correct?

9 A. Correct.

10 Q. You have not reviewed
11 guidance from the DEA regarding
12 suspicious order monitoring, correct?

13 A. Correct.

14 Q. You are not experienced with
15 supply chain; is that correct?

16 So what I mean by that is
17 the moving of products along a supply
18 chain, like in this case,
19 pharmaceuticals, are you an expert in
20 that?

21 A. Yeah, I was going to say,
22 I'm -- I'm familiar with the concept.

23 And a little bit familiar with operations
24 research. But I would not call myself an

1 expert in supply chain management.

2 Q. Would you consider yourself
3 an expert in suspicious order monitoring?

4 A. No.

5 Q. Would you consider yourself
6 an expert in issues from -- relating to
7 the Drug Enforcement Agency?

8 MR. MOUGEY: Objection.

9 THE WITNESS: That's a
10 little too broad a question.
11 There may be some aspects that I
12 would be an expert in, for
13 instance, the -- the aspects that
14 I actually address in my expert
15 report, which is the assessment of
16 the data.

17 But if you mean something
18 more specific to the DEA as
19 opposed to the data that the DEA
20 produced to me, then I would
21 say -- I would agree with you,
22 what -- whatever the implication
23 was of your question.

24 BY MS. McENROE:

1 Q. Sure. And so I can say it
2 another way. You've never worked at the
3 DEA, correct?

4 A. Correct.

5 Q. You've never worked at the
6 FDA?

7 A. Correct.

8 Q. You've never worked at the
9 CDC?

10 A. Correct.

11 Q. Do you have any
12 healthcare-related experience, aside from
13 being potentially a consumer of
14 healthcare, that's not reflected in your
15 Appendix 1 to your expert report?

16 A. No.

17 Q. Is it fair to say that the
18 vast majority of your professional
19 experience relates to securities-related
20 issues?

21 Or I can say that a
22 different way if you'd prefer.

23 And I think I've seen you
24 having written this a number of times.

1 computer, a sort of old school computer,
2 that -- that you are taking in the data,
3 processing it and putting out output in
4 your opinions?

5 A. Yes. Exactly.

6 Q. Okay. And you're not saying
7 that the sort of black box that data is
8 going into is the right or the only
9 algorithm to be used on that data. You
10 are just the one who is actually doing
11 the calculations; is that correct?

12 A. Well, close. It's not a
13 black box at all. A black box is
14 something where something -- data goes in
15 and results come out and you can't tell
16 what's happening. In fact, this is not a
17 black box. It's the opposite of that.

18 I'm describing for you in
19 detail, I think, exactly what's being
20 done to the data. I don't take a
21 position on whether -- which or if any of
22 these algorithms and the associated
23 assumptions are appropriate, I think was
24 the word you used earlier?

1 Q. Yep.

2 A. I'm just saying that you
3 take the -- the data that we've prepped,
4 and apply these formulas to it, you get
5 particular results.

6 Q. And is that also true not
7 only about whether those algorithms, the
8 assumptions, are appropriate, but also
9 true that you are not making any opinion
10 as to whether they are legally required?

11 A. Right. I think all of these
12 issues are being handled by other
13 experts. I -- as you said a minute ago.
14 And I didn't take it as a pejorative.

15 I'm just serving as a calculator.

16 Q. And in this Paragraph 21 you
17 use the -- the phrase "algorithms" to
18 discuss what's being applied in
19 Section 9. But you also use the word
20 "approaches" later I believe.

21 Are you saying the same
22 thing?

23 So are -- in -- calling it
24 algorithms here in Paragraph 21, are you

1 describing what you later in your report
2 call an approach, Approach 1, Approach 2,
3 Approach 3?

4 A. Yes.

5 Q. Let's take a look at
6 Section 9. So in particular I'll point
7 you to Paragraph 130, which is -- starts
8 on Page 56.

9 Are you there?

10 A. Yes.

11 Q. Great. And the section
12 heading is "Transaction Analysis."

13 Do you see that?

14 A. Yes.

15 Q. And this is what we were
16 just referring to when we were talking
17 about the algorithms?

18 A. Yes.

19 Q. And Paragraph 130 starts, "I
20 implemented various approaches to
21 identify transactions meeting specified
22 criteria using the non-public ARCOS data
23 from 2006 to 2014, supplemented with
24 defendant transaction data where the

1 legitimate intended uses to illicit
2 activities.

3 Q. Do you agree that diversion
4 is a crime?

5 A. I have no -- no opinion --

6 MR. MOUGEY: Objection.

7 Outside the scope.

8 THE WITNESS: -- one way or
9 the other.

10 BY MR. EPPICH:

11 Q. Are you planning to offer
12 any opinions about whether or not any of
13 the defendants diverted prescription
14 opioids in this litigation?

15 A. No.

16 Q. I'd like to turn back to
17 Page 56 of your report. Page 56 is the
18 start of Section 9, transaction analysis,
19 you'll recall.

20 I'd like to return to the --
21 the five methodologies that you implement
22 to identify what you call flagged orders.
23 Okay?

24 A. Yes.

1 Q. You testified earlier that
2 the plaintiffs' counsel provided these
3 five methodologies for identifying
4 flagged transactions to you, correct?

5 A. Yes.

6 Q. You didn't come up with the
7 five methodologies yourself?

8 A. No.

9 Q. You have no opinion of -- on
10 whether any of the five methodologies is
11 appropriate for evaluating whether or
12 not -- or, excuse me. Let me strike
13 that.

14 You have no opinion on
15 whether any of the five methodologies are
16 appropriate for identifying what you call
17 flagged transactions, correct?

18 A. Correct.

19 Q. There may be other
20 appropriate methodologies for -- for --
21 let me strike that.

22 You'd agree there may be
23 other appropriate methodologies for
24 flagging suspicious orders, correct?

1 A. Yes.

2 Q. But you have no opinion
3 about the other methods of flagging
4 suspicious orders, correct?

5 A. Or even that they exist. I
6 just allow, in your previous question,
7 that they may exist. I don't have an
8 opinion one way or another on -- on any
9 of the subject matter material.

10 Q. You used algorithms to
11 identify the first flagged transactions
12 in these methodologies?

13 A. Yes.

14 Q. And then you flagged every
15 transaction after that, correct?

16 A. Correct.

17 Q. That was according to
18 plaintiff -- plaintiffs' counsel's
19 instruction, correct?

20 A. Correct.

21 Q. And you did that for all
22 five methodologies?

23 A. Correct.

24 Q. You did not use your

1 algorithm in the five methodologies to
2 identify any of the subsequent
3 transactions that you flagged after the
4 first transaction?

5 A. If I understand that
6 question, is the same as the question
7 asked earlier today. The methodologies
8 flagged that first transaction and
9 everything after that gets flagged. So,
10 in some complete description, the
11 methodology does flag those later
12 transactions, because it flags the first
13 one and every one that follows.

14 But the methodology is not
15 reapplied to each transaction anew. I --
16 I guess is the way I would say it.

17 Q. Another way to say that
18 would be there's no computational
19 analysis on any of the subsequent
20 transactions after that first flagged
21 transaction, correct?

22 A. Correct.

23 Q. Who developed your
24 algorithms for each of these five

1 methodologies?

2 A. I'm sorry, what do you mean
3 by developed?

4 Q. Well, you wrote algorithms
5 for each of these five methodologies,
6 correct?

7 A. Correct.

8 Q. Who wrote those algorithms?

9 A. Well, it was a joint effort
10 of -- so at a very high level you can
11 think of the instruction about which
12 algorithms to use and the assumption that
13 once a transaction is flagged, everything
14 on that day and thereafter is flagged.

15 You could think of that as part of
16 developing or writing the algorithm.

17 So plaintiffs' counsel, some
18 discussion of that between me and -- and
19 my staff and plaintiffs' counsel, and
20 then the actual programming of those
21 rules, members of my staff.

22 Q. It's true that none of your
23 methodologies was ever used by a
24 distributor to identify suspicious

1 A. Well, as I said earlier, you
2 end up with fewer transactions being
3 flagged for sort of obvious reasons.

4 Q. So you'd agree that your
5 reliance on plaintiffs' counsel
6 assumption to flag every subsequent
7 transaction increased the number of
8 flagged transactions?

9 MR. MOUGEY: Objection.

10 Asked and answered.

11 Are we -- are we going to --
12 are we going to go through the
13 same questions we did this
14 morning? I mean, that's -- that's
15 the third time he's answered that
16 question.

17 MR. EPPICH: I'm doing my
18 best but I --

19 MR. MOUGEY: I hear you, but
20 when we -- I'm --

21 MR. EPPICH: Keep your
22 objection as to form.

23 MR. MOUGEY: I mean, the
24 fact that we are allowing

1 different counsel to ask questions
2 doesn't mean we're going to sit
3 and ask the same questions. I
4 mean, some of these questions are
5 almost verbatim of what we went
6 through this morning fishing for a
7 different answer.

8 MR. EPPICH: I disagree with
9 that, sir.

10 MR. MOUGEY: I mean, I can
11 almost cut and paste these and put
12 them on top.

13 And I think if y'all haven't
14 coordinated who is going to take
15 what topics, I think we need to
16 make sure we do that for tomorrow.

17 Because these questions are almost
18 verbatim to what we went through
19 this morning. I could answer
20 them.

21 BY MR. EPPICH:

22 Q. Sir, you may answer the
23 question.

24 A. If you assume 100 percent

1 due diligence, you don't flag very many
2 orders. If you assume zero due
3 diligence, you flag more orders. And
4 this model is flexible enough to
5 incorporate different sets of facts
6 developed about the extent of due
7 diligence between zero and 100 percent.

8 Q. If we could turn to
9 Paragraph 131 of your report which is on
10 Page 56. This is the first paragraph
11 under the maximum monthly trailing
12 six-month threshold.

13 A. Yes.

14 Q. In Paragraph 131 of your
15 report, you provide an example. You say,
16 "If the number of dosage units containing
17 hydrocodone shipped from a distributor to
18 a pharmacy in February, March, April,
19 May, June, and July were 5,000, 10,000,
20 7,000, 8,000, 9,000, and 9,500
21 respectively, a requested transaction in
22 August would be flagged if it would cause
23 the number of dosage units containing
24 hydrocodone the distributor shipped to

1 the pharmacy to exceed 10,000."

2 Did I read that correctly?

3 A. Yes.

4 Q. So if the pharmacy ordered

5 10,500 in August of 1997, that order

6 would be flagged under your six-month

7 threshold analysis, correct?

8 MR. MOUGEY: Objection.

9 Asked and answered.

10 THE WITNESS: I'm sorry.

11 Which order?

12 BY MR. EPPICH:

13 Q. If the pharmacy were to

14 order 10,500 in August of, say, 1997,

15 that order would be flagged under your

16 six-month threshold analysis, correct?

17 A. I think there's some

18 confusion in that question. Maybe my

19 sentence there is not clear. I could

20 explain if you'd like.

21 Q. Well, I'm just trying to

22 figure out if the pharmacy ordered 10,500

23 in August, wouldn't that order be

24 flagged?